Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
The Effect of Foreign Mobile Termination Rates on U.S. Consumers	)	IB Docket No. 04-398
	)	
	)	

REPLY COMMENTS OF KDDI CORPORATION

KDDI Corporation ("KDDI") hereby submits these brief reply comments in response to the Notice of Inquiry ("NOI") issued by the Federal Communications Commission ("FCC") in the above-referenced docket on October 26, 2004. KDDI is the largest facilities-based international carrier in Japan, and also is a competitive provider of mobile communications services in Japan. KDDI previously has filed a submission with the FCC on the issue of foreign mobile termination rates (copy attached) and hereby incorporates that submission into the record in this proceeding.[1]

In response to the NOI and the comments submitted by various parties, KDDI submits the following:

1. The establishment and regulation of foreign mobile termination rates is properly within the jurisdiction of the national regulatory agency ("NRA") in the country in which the traffic is terminated. The FCC does not have authority to intervene unilaterally through the adoption of benchmarks or other means because it would create direct jurisdictional

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1 *See* Reply Comments of KDDI Corporation, IB Docket Nos. 96-261 & 02-324, submitted Feb. 19, 2003.

conflicts with NRAs in foreign countries who have already prescribed or actively regulated termination rates for mobile networks.

2. The establishment of rates by the NRA in the originating country for the termination of traffic in another country subject to the regulation of a foreign NRA is an inherently unstable global regulatory regime and would lead to irreconcilable conflicts between NRAs and carriers in multiple countries.

3. In the event the FCC believes that a particular country's mobile termination rate is excessive or otherwise violates applicable laws and regulations, the FCC should not engage in self-help through the prescription of benchmark rates or other unilateral measures. Rather, the FCC should seek to address such issues by multilateral efforts through the WTO or the ITU, including the ongoing work of ITU-T Study Group 3, which is currently addressing the issue of mobile termination rates.

4. It would be inappropriate for the FCC to seek to calculate and impose a single putative cost-oriented rate for a particular foreign mobile carrier. In particular, the R-TCP approach proposed by AT&T is not necessarily the correct, and at a minimum it is not the only, methodology for calculating termination rates that may fairly be described as just, reasonable and otherwise cost-oriented.[2]

5. There is a range of rates, not a single rate, which may be considered to be just, reasonable and otherwise cost-oriented under applicable international standards, and it is the job of each NRA to calculate a rate within that range based on factors and policies which are

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[2] *E.g.*, *Unbundled Access to Network Elements*, WC Docket No. 04-313 & CC Docket No. 01-338, FCC 04-290, rel. Feb. 4, 2005 at ¶ 51 (noting that the "just and reasonable" standard under Section 201(b) governing Special Access services offered by U.S. incumbent local exchange carriers is significantly different than the long-run incremental cost methodology adopted by the FCC for unbundled network elements).

unique to the specific country. There is not a "one size fits all" rate that may be prescribed by the FCC for mobile termination rates in a foreign country. This proposition is equally true for the termination of traffic on foreign fixed and mobile networks.

6. It is undisputed that the cost of terminating traffic on foreign mobile networks is higher than the cost of terminating traffic on foreign fixed networks, and hence it is reasonable for foreign mobile termination rates to be higher than fixed network termination rates. The task of determining the appropriate termination rate differential in a specific country is properly the province of the NRA in that country. Even within the United States, the FCC does not seek to calculate the specific rates that comport with its chosen TELRIC methodology for establishing unbundled network element rates. Rather, each state regulatory commission establishes the specific rates that will be charged within its state based on specific inputs that are unique to the provision of service within the state.

7. In countries that have adopted a Calling Party Pays ("CPP") regime, mobile operators are under severe competitive and other pressures to reduce termination rates. Most facilities and equipment in a mobile network are used both for the origination and termination of traffic. As competitive pressures in the overall mobile industry force down total network costs, the costs recovered through mobile termination rates also decline accordingly. Other downward pressures on mobile termination rates exist in many CPP countries, including public advocacy before regulators and legislatures by various interest groups in favor of lower rates.

8. Parties who argue that there are no significant pressures forcing mobile termination rates lower apparently have no explanation for the empirical fact that mobile termination rates have declined, sometimes substantially, in many countries. In Japan, the

current level of mobile termination rates is relatively low compared to other CPP countries. Further, KDDI's mobile termination rate has declined by approximately 30% during the last four years, including an approximately 4% decline in 2004 (3.6% for in-region calls and 4.2% for out-of-region calls). The reality of ongoing, often substantial declines in foreign mobile termination rates repudiates the contention by parties who seek to persuade the FCC to engage in unilateral action that no pressures exist today which can result in lower rates. The fact that mobile termination rates may have increased in one or two countries is not sufficient to demonstrate that downward pressure on mobile termination rates is absent worldwide.

9. Mobile operators in Japan do not discriminate among originating carriers with respect to termination rates. For example, one of KDDI's companies, the Okinawa Cellular Telephone Company, makes its interconnection rates publicly available, and such rates apply to all originating carriers for both domestic and international traffic.

10. KDDI provides both fixed and mobile services in Japan, yet KDDI does not receive a lower interconnection rate for mobile-terminating traffic that originates on KDDI's fixed network compared to mobile-terminating traffic originating on other carriers' fixed networks.

11. In Japan, mobile termination rates have been steadily declining for several years, which has resulted in similar declines in the rates charged by Japanese international carriers to U.S. carriers for terminating traffic on Japanese mobile networks. Put in other words, mobile termination rate declines have been passed through to U.S. carriers.

12. KDDI has observed that U.S. carriers do not immediately or fully pass through reductions in mobile termination costs to U.S. consumers in the form of a reduction in the surcharge they impose on their retail customers. To the contrary, U.S. carriers have earned a

substantial profit margin by marking up their foreign mobile termination costs. As one example, a major U.S. international carrier imposes a surcharge of $.14/minute (U.S.) for calls on the US-Japan route even though the difference between fixed and mobile termination costs in Japan is only $.10/minute (U.S.), thereby earning a $.04/minute (U.S.) or 40% margin on the surcharge alone. While KDDI recognizes that exchange rate risk is a legitimate factor to be considered by U.S. carriers, KDDI believes that this 40% mark-up is excessive, and KDDI would bring to the FCC's attention its previous decision in Docket No. 96-45 to prohibit U.S. carriers from marking up the universal service line-item charges they impose on their retail customers. KDDI recommends that the FCC take actions to prevent U.S. carriers from harming U.S. consumers through surcharge mark-ups rather than by intervening unilaterally to prescribe foreign mobile termination rates.

13. Softbank BB Corporation ("Softbank") has argued (at p. 4) that the mobile termination rate in Japan is excessive by noting that the termination rate for all traffic in the U.S. (whether mobile or fixed) is approximately $.02/minute (US) under prevailing agreements. What Softbank ignores is that the U.S. carriers do not impose a higher rate for mobile termination because the United States is a Receiving Party Pays ("RPP") regime where the higher costs of mobile termination are paid by the receiving party, not the originating party. While there is no legitimate basis under an RPP regime to impose a higher termination rate for mobile-terminating calls, this does not indicate that mobile termination rates are inappropriate in a CPP regime (like Japan) or that the current mobile termination rates in Japan are excessive.

14. Softbank also uses a misleading comparison of retail rates in Japan and other countries to argue that the mobile sector in Japan is not competitive. *See* Softbank Comments at pp. 4-5 & Exh. 1, Att. 2. In its rate comparison, Softbank cites the White Paper on

National Life but neglects to include the purchasing power parity ("PPP") data included in that document, which would effectively reduce the Japanese mobile rates by approximately 16%.[3] KDDI also would note that the Ministry of Internal Affairs and Communications conducts a survey each fiscal year on price variances between Japan and overseas telecommunications services. The fiscal year 2003 survey shows that in some cases the retail rates for mobile services in Japan are less expensive than those in other countries.[4]

15. In general, the methods for calculating Average Revenues Per User ("ARPU") and monthly call minutes in CPP and RPP regimes vary, sometimes significantly, from one country to another. As a result, it can be misleading to make simple comparisons in ARPU and monthly call minutes between Japan and other countries. To make an accurate analysis and comparison, it would be necessary to examine numerous factors to ensure that the data represent an apples-to-apples comparison. Such factors may include, among others, the inclusion of mobile data services in the ARPU calculations, and the extent to which the calculation of monthly call minutes counts both incoming and outgoing calls, or only outgoing calls. As one example, Softbank's ARPU data erroneously include Japanese mobile data services, which severely distorts the comparison. KDDI's Voice ARPU is 5,800 yen, which is virtually identical to the U.S. ARPU at current exchange rates.[5]

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3 Softbank's data are based on calculations for fiscal 2002 at roughly 126 yen per US dollar, whereas the White Paper on National Life contains data showing that the PPP exchange rate for fiscal year 2002 is closer to 146 yen to the dollar.

4 The survey can be located at the following website – http://www.soumu.go.jp/joho_tsusin/eng/Releases/Telecommunications/news040831_1.html.

5 $1=105.02 yen (Federal Reserve Bank of New York Foreign Exchange Rate, 10 AM, February 14, 2005).

16. In summary, KDDI believes that there are legitimate reasons for countries implementing a CPP regime to charge higher rates for mobile network termination than for fixed network termination, and that the FCC should not, and cannot lawfully, unilaterally prescribe the foreign mobile termination rate through the adoption of benchmarks or other measures. KDDI submits that current mobile termination rates in Japan are justified, and that the FCC should instead focus on the extent to which U.S. international carriers have imposed excessive surcharges on U.S. consumers by marking-up foreign mobile termination rates. With respect to Softbank's comments, KDDI submits that the data relied upon by Softbank are misleading in certain important respects, and therefore urges the FCC to take a cautious approach in reviewing the relevance of such data to this proceeding.[6]

Respectfully submitted,

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6 Softbank lodges certain objections (at pp. 7-8) regarding spectrum allocation decisions made by the NRA in Japan. KDDI submits that this complaint is well beyond the scope of this proceeding and hence KDDI will not comment substantively.